NO: 17-5554

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2017

DENARD STOKELING,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Eleventh Circuit

FOURTH SUPPLEMENTAL BRIEF OF PETITIONER

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TABLE OF AUTHORITIES

CASES:

In re Welch,

___ F.3d ___, 2018 WL 1325013 (11th Cir. March 15, 2018) 1

United States v. Fritts,

841 F.3d 937 (11th Cir. 2016) 1

United States v. Walton,

881 F.3d 768 (9th Cir. Feb. 1, 2018) 1

STATUTORY AND OTHER AUTHORITY:

Supreme Court Rule 15.8 1

Ala. Code § 13A-8-41(a)(1) 1

Ala. Code § 13A-8-43(a)(1) 1

FOURTH SUPPLEMENTAL BRIEF

Pursuant to Supreme Court Rule 15.8, Petitioner Denard Stokeling wishes to alert the Court to the Eleventh Circuit Court of Appeals' recent decision in *In re Welch*, __ F.3d ___, 2018 WL 1325013 (11th Cir. March 15, 2018), holding definitively – and contrary to the Ninth Circuit in *United States v. Walton*, 881 F.3d 768 (9th Cir. Feb. 1, 2018) – that a conviction for Alabama first-degree robbery is categorically a violent felony within the ACCA's elements clause because it requires overcoming victim resistance.

In so holding, the Eleventh Circuit followed its precedent on Florida robbery, stating:

> [Mr. Welch's] prior conviction for Alabama first degree robbery qualifies as a predicate offense under the elements clause because it requires force with the intent to overcome physical resistance. *See* Ala. Code §§ 13A-8-41(a)(1), -43(a)(1) (providing that a person commits first degree robbery if in the "course of committing a theft he . . . [u]ses force against the person of the owner ... with intent to overcome his physical resistance or physical power of resistance" and is "armed with a deadly weapon or dangerous instrument" or "[c]auses serious physical injury to another"); *see also United States v. Fritts*, 841 F.3d 937, 941–42 (11th Cir. 2016) (concluding that a conviction under Florida's armed robbery statute qualifies as a violent felony under the ACCA's elements clause because the statute requires the "use or threatened use of physical force") (quotation marks omitted).

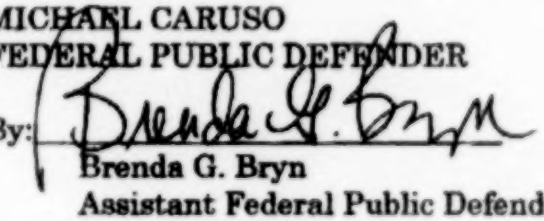
Id.

Welch confirms that, as argued in Petitioner's Third Supplemental Brief, the Eleventh Circuit treats Alabama robbery as analytically indistinguishable from Florida robbery; it deems force sufficient to overcome resistance to be categorically violent, contrary to the thrice-expressed view of the Ninth Circuit; and therefore, resolution of the circuit conflict on Florida robbery will have broad legal importance

and affect the status of convictions under other robbery statutes with similar "overcoming resistance" elements.

Respectfully submitted,

MICHAEL CARUSO
FEDERAL PUBLIC DEFENDER

By: 

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